UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES SAN FRANCISCO BRANCH OFFICE

CAESARS ENTERTAINMENT d/b/a
RIO ALL-SUITES HOTEL AND CASINO

and Case 28-CA-60841

INTERNATIONAL UNION OF PAINTERS
AND ALLIED TRADES, DISTRCIT COUNCIL 15,
LOCAL 159, AFL-CIO

Pablo Godoy and Larry A. Smith, Attys.
for the Acting General Counsel.

John D. McLachlan and David B. Dornak, Attys.
for the Respondent.

DECISION

STATEMENT OF THE CASE

WILLIAM L. SCHMIDT, Administrative Law Judge. I heard this case at Las Vegas, Nevada, on January 10, 2012. The International Union of Painters and Allied Trades, District Council 15, Local 159, AFL-CIO (Charging Party or Local 59) filed the charge on July 5, 2011.[1] On September 30, 2011, the Regional Director for Region 28 of the National Labor Relations Board (NLRB or Board) issued a complaint on behalf of the Acting General Counsel alleging that Caesars Entertainment d/b/a Rio All-Suites Hotel and Casino (Respondent or Company) violated Section 8(a)(1) of the National Labor Relations Act (NLRA or Act) by maintaining certain employee work rules alleged to be overly-broad and discriminatory.[2] Respondent filed a timely answer denying that it engaged in the unfair labor practices alleged.

[1] The name of the International Union has been corrected to reflect its official name.

[2] Sec. 8(a)(1) makes it an unfair labor practice for an employer to "interfere with, restrain or coerce employees in the exercise of the rights guaranteed in section 7." The part of Sec. 7 pertinent here guarantees employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and . . . to refrain from any or all such activities."

On the entire record, including my observation of the demeanor of the witnesses, and after carefully considering the briefs filed by the Acting General Counsel and Respondent,[3] I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation engaged in the operation of a hotel and casino at Las Vegas, Nevada, derived gross revenues in excess of $500,000 during 12-month period ending July 5, 2011. During same period, Respondent, in conducting its business operations described above, purchased and received at the its Las Vegas facility goods valued in excess of $50,000 directly from points outside the State of Nevada. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Introduction

The Company is one of 10 properties in Las Vegas, Nevada, owned and operated by Caesar's Entertainment, Inc (Caesar's). This property employs more than 3000 employees. About 1700 of those employees are covered by the three collective-bargaining agreements between the Company and four separate labor organizations. Neither Local 159 nor any of its affiliated organizations represent any of the Company's workers nor is there any evidence that it currently seeks to represent any workers at this property.

The Acting General Counsel alleges in paragraph 4 of the complaint that Respondent has maintained 10 overly broad work rules that tend to chill employee Section 7 activities. The challenged rules are set forth in the "The Rio Employee Handbook" (the handbook) under the section titled "What the Rio Expects From You." Jt. Exh. 1, p. 3, et seq. The Company provides the handbook to each newly hired employee and redistributes it to all employees when revised. The handbook, which appears to be adapted from that in use at Caesar's properties nationwide, was last revised in 2007. None of the unions that currently represent employees have filed a grievance challenging the rules at issue here.

B. General legal principles that govern workplace rules under the NLRA

An employer violates Section 8(a)(1) by maintaining workplace rules that tend to chill Section 7 activities by its employees. *Lafayette Park Hotel,* 326 NLRB 824, 825 (1998). In *Lutheran Heritage Village – Livonia*, 343 NLRB 646 (2004), the Board established an analytical framework for fact finders faced with deciding NLRA cases that challenge the legality of workplace rules. It provides that rules explicitly restricting Section 7 activities violate Section 8(a)(1). But where a rule does not explicitly restrict Section 7 activity, the General Counsel must

[3] Local 159 joined in the brief filed by the Acting General Counsel.

establish by a preponderance of the evidence that: (1) employees would reasonably construe the rule to prohibit Section 7 activity; (2) the employer adopted the rule in response to union activity; or (3) the employer applied a rule to restrict employee Section 7 activity. Id. at 647. If a rule explicitly infringes the Section 7 rights of employees, the mere maintenance of the rule violates the Act without regard for whether the employer ever applied the rule for that purpose. *Guardsmark v. NLRB*, 475 F.3d 369, 375-376 (D.C. Cir. 2007) In all cases, the Board requires the trial judge to give the rule a reasonable reading, refrain from reading particular phrases in isolation, and avoid improper presumptions about interference with employee rights. 343 NLRB at 646.

The specific rules at issue are described below, with the challenged aspects generally shown in italics. No evidence shows that either the handbook or any specific rule contained in it was adopted in response to a union organizing campaign. Additionally, there is no evidence that the rules have ever been applied to inhibit employee Section 7 activities. Consequently, the analysis provided below centers on whether a challenged rule expressly restricts employee conduct protected by Section 7, and, if not, whether employees would reasonably construe the rule to prohibit Section 7 activity.

C. Relevant facts and conclusions

1. *The off-duty employee attire rule*

Complaint paragraph 4(1) alleges that the handbook rule prohibiting off-duty employees from wearing "clothing which displays profanity, vulgarity of any kind, obscene or offensive words or phrases (sic)." This prohibition applies essentially to off-duty employees who visit Respondent property for a variety of purposes. The rule in its entirety reads:

> **Visiting Property When Not In Uniform:** When on property while off duty for training, New Hire Orientation, meetings, or coming in to change for work, the following Appearances Guidelines apply: All clothing must be neat and presentable. Clothing may not be torn, damaged or defaced in any way. The following items should be worn: shirts, shoes or strapped sandals and name tag/badge if on property for work-related reasons or back of house services (e.g., HR, Payroll). *The following may not be worn: bathing suits, short shorts, thong-type sandals, tube tops, halter tops, tank tops, thin straps, strapless clothing, midriff tops, clothing which displays profanity, vulgarity of any kind, obscene or offensive words or pictures*.

The Acting General Counsel implicitly concedes that this rule does not explicitly restrict Section 7 activity. Rather, he claims the words "clothing which displays profanity, vulgarity of any kind, obscene or offensive words or pictures" could reasonably lead an employee to "construe the rule to prohibit them from wearing clothing intended to protest working terms or conditions for fear that Respondent may deem it to be vulgar, profane, or offensive." (AGC Br., p. 7) Respondent argues that this rule is but one aspect of a six page section of the handbook addressing the image employees present to the hotel guests rather than a prohibition against wearing clothing with a "union message."

I do not agree with the claim that Respondent violated the Act by the mere maintenance of this rule because I am unpersuaded that employees would reasonably construe the rule to prohibit Section 7 activity. This is particularly true where, as here, the evidence shows that employees frequently wear clothing at the facility that bears a union message. The Acting General Counsel's argument, in my judgment, ignores the Board's admonition against reading phrases in isolation and making improper presumptions about interference with employee rights. Fairly read, in the context where it appears, the adjective "offensive" addresses matters of taste a reasonable person would regard as outside the norms of decency common in the community from which Respondent draws its customers rather any of the various forms of activity protected by Section 7. *Adtranz ABB Daimler-Benz Transportation, N.A. Inc. v. NLRB*, 253 F.3d 19, 26 (D.C. Cir. 2001).

The two cases cited by the Acting General Counsel predate *Lutheran Heritage Village*. AGC Br., p. 8. One of the cited cases, *University Medical Center,* 335 NLRB 1318 (2001), was denied enforcement in pertinent part by the D.C. Court of Appeals. 335 F.3d 1079 (D.C. Cir. 2003). Given the favorable discussion in the Board's *Lutheran Heritage Village* decision of that circuit's rationale in *Adtranz,* supra*,* a case similar to *University Medical Center*, I find the continued vitality of the two Board cases cited by the Acting General Counsel very questionable. For these reasons, I recommend dismissal of this allegation.

2. *The rules governing the use of facilities by off-duty employees*

The allegations in complaint paragraphs 4(2) and 4(3) challenge work rules applicable to the use of Respondent's facilities by off-duty employees. The former is explicitly stated as conduct standard No. 9 and is 1 of 35 enumerated in the employee handbook, under the "Conduct Standards" section. The rule, along with the section's preamble, read:

> **Conduct Standards:** Out of respect for our guests and each other, you are expected to maintain certain behavior and performance standards. The following list provides examples of behavior that can result in disciplinary action; it is not intended to be an exhaustive list. You are expected to use good judgment at all times in behaving appropriately at work.
>
> . . .
>
> 9. *With your manager's authorization you may use the Rio public facilities while off duty. When doing so, employees must act professionally and adhere to Conduct Standards (note the above Conduct Standard regarding gambling). In addition, if alcohol is consumed, it should be done responsibly while having a meal. Employees participating in company-sponsored events where alcohol is served (e.g. award banquets) must act responsibly and professionally*.

The other rule in this category challenged by the Acting General Counsel appears several pages ahead of rule 9. It reads as follows:

> **Use of Facility**: Our guests have priority in using our facilities. Employees, however, are welcome to visit the property as a guest during off duty, non-peak

> business hours. *Visits are permitted with your supervisor's or manager's approval so long as you are not in uniform. With that approval, you may visit public lounges, restaurants, casino and other public areas while off duty. When using any of the facilities as a guest you are restricted to public areas. Even though off duty, you are expected to conduct yourself in a manner consistent with the Conduct of Standards. Please ensure you review Conduct Standards #7 (gambling) and #9 (consuming alcohol) prior to visiting the property.*

The Acting General Counsel argues that these two rules are "facially invalid" because they require employees to obtain permission anytime they wish to visit Respondent's facility when off duty. In addition, the Acting General Counsel argues the rules are unlawful because a reasonable employee could construe them to inhibit Section 7 activities. In support of his contentions, the Acting General Counsel cites *Teletech Holdings, Inc*., 333 NLRB 402 (2001) (rule barring the distribution of literature without "proper authorization" unlawful because it was not limited to working time nor working areas and because it required prior managerial authorization) and *Tri-County Medical Center*, 222 NLRB 1089 (1976) (rule barring off-duty employees access to parking lots, gates, and other outside nonworking areas unlawful in the absence a business justification). Respondent, noting that neither of these access rules mention or implicate any type of Section 7 activity, argues that both rules are analogous to a rule found lawful by the Board in *Lafayette Park Hotel,* supra at 827.

I concur with Respondent's contention that these rules are essentially indistinguishable from hotel rule 6 found lawful in the *Lafayette Park Hotel* case. There the Board, citing *Brunswick Corp*., 282 NLRB 794, 795 (1987), found hotel rule 6 could not be read by reasonable employees as requiring prior managerial permission in order to engage in protected activities on their free time in nonwork areas. Plainly, Respondents rules address only the use of "public" areas inside the hotel facility. As such the rules are inapplicable to parking lots and exterior nonwork areas such as those addressed in the *Tri-County* case, or even nonwork interior areas. And as the rules make no reference to the distribution of literature, the Acting General Counsel's reliance on the *Teletech Holdings* case is misplaced. Accordingly, I recommend dismissal of complaint paragraphs 4(2) and 4(3).

3. *The confidentiality rules*

Complaint paragraphs 4(4) and 4(5) allege that Respondent maintains confidentiality rules that violate Section 8(a)(1). Complaint paragraph 4(4) alleges Respondent's broad elaboration of its confidentiality policy (Rule 2.21) is unlawful. That provision provides:

> ***Confidentiality****: All employees are prohibited from disclosing to anyone outside the Company, indirectly or directly, any information about the Company which has not been shared by the Company with the general public. This type of disclosure includes participation in internet chat room or message boards. Exceptions to the rule include disclosure which are authorized by the Company or required or authorized by the law. This information includes, but is not limited to:*

- *Company financial data*
- *Plans and strategies (development, marketing, business)*
- *Organization charts, salary structures, policy and procedures manuals*
- *Research or analyses*
- *Customer or supplier lists or related information.*

The property or Corporate Law department should be consulted whenever there is a question about whether the information is considered confidential. Any failure to uphold this policy should be communicated to the Law department and may result in immediate Separation of Employment. All managerial, supervisory, and selected positions are required to comply with the "Use and Disclosure of Confidential Information" policy.

Complaint paragraph 4(5) challenges conduct standard No. 10, which states: "*Employees will not reveal confidential information to unauthorized persons*."

Although the allegation at complaint paragraph 4(4) suggests that the Acting General Counsel regards the confidentiality rule (Jt. Exh. 1, p. 2.21) as unlawful in its entirety, the argument contained in his brief dispels any such notion. Thus, his brief states:

> Included within Respondent's broad definition of what constitutes confidential information, is the prohibition against the disclosure of "organizational charts, salary structures, policy and procedure manuals." The rule further defines confidential information as "any information about the company which has not been shared by the Company with the general public."

(AGC Br. pp. 12-13) Citing *Double Eagle Hotel & Casino*, 341 NLRB 112 (2004) and *Automatic Screw Products,* 306 NLRB 1072 (1992), the Acting General Counsel argues that the rule is "unlawful on its face" because it would inhibit union and protected concerted activity by precluding employees from discussing wages and working terms and conditions as well as freely contacting and conferring union representative, Board agents, or other third parties on "internet chat rooms or message boards" concerning these particular subjects.

Respondent's argument, which draws a distinction between "salary structures" and an individual employee's wage rate, argues that nothing in these two rules implicate matters protected by Section 7. In addition, Respondent argues that this rule is analogous to the confidentiality rules the Board found lawful in *Lafayette Park Hotel*, supra, *Super K-Mart*, 330 NLRB 263 (1999), and *Mediaone of Greater Florida, Inc*., 340 NLRB 277 (2003). I agree.

At first blush, Respondent's prohibition against the disclosure of information contained in organizational charts, salary structures, and policy and procedures manuals is arguably an explicit restriction on Section 7 activity and thus unlawful on its face as argued by the Acting General Counsel. Thus, in the context of union organizing activity, an organizational chart typically contains information of particular significance in determining the scope of an appropriate unit, the unit placement of particular individuals, and other critical details of significance to the employee organizational effort. Arguably, rules permitting employers to

muzzle their employees with respect to this type of information, whether gained from a first-hand observation of an organizational chart, or have come to know by way of their employment experience, would be clearly destructive of matters at the core of the Section 7 right to participate in the planning of a union organizing strategy with professional organizers. Similarly, policy and procedures manuals often contain significant information about the terms and conditions of employment for employees. For example, it is not unusual for these types of documents in the hotel industry to contain production standards and rules applicable to particular groups of employees such as room cleaners, or even minutiae addressing the expected conduct of particular groups having contact with the public. And finally, after employees select a representative, sharing information they have gained concerning the employer's salary structures with their professional bargaining representative to fashion bargaining demands would be of particular importance.

But having said that, the Board's decision in *Mediaone,* supra, has already held that an employer's rule that barred the disclosure of "organizational charts and databases" (the latter would almost certainly contain an employer's salary structures) among numerous other matters do not explicitly restrict Section 7 activity. And as to whether employees would reasonably construe such rules as inhibiting Section 7 activity, the Board majority, by the following language, gives the overall context in which the doubtful portions appear considerable significance:

> [W]e do not believe that employees would reasonably read this rule as prohibiting discussion of wages and working conditions among employees or with a union. Although the phrase "customer and employee information, including organizational charts and databases" is not specifically defined in the rule, it appears within the larger provision prohibiting disclosure of "proprietary information, including *information assets* and *intellectual property*" and is listed as an example of "intellectual property." Other examples include "business plans," "marketing plans," "trade secrets," "financial information," "patents," and "copyrights." Thus, we find, contrary to our dissenting colleague, that employees, reading the rule as a whole, would reasonably understand that it was designed to protect the confidentiality of the Respondent's proprietary business information rather than to prohibit discussion of employee wages.[6] "Clearly, businesses have a substantial and legitimate interest in maintaining the confidentiality of proprietary information." *Lafayette Park*, supra, 326 NLRB at 826 (employer rule prohibiting "divulging Hotel private information to employees or other individuals or entities that are not authorized to receive that information" found lawful*); Super K-Mart*, supra, 330 NLRB at 263, 264 (employer rule stating that "Company business and documents are confidential" and "disclosure of such information is prohibited" found lawful). [Footnotes omitted]

340 NLRB 279. Although Respondent's rule contains no magic words such as "intellectual property" or "proprietary assets," the examples set forth in Respondent's rules plainly establish that these are the interests Respondent seeks to protect. For this reason, I find it doubtful that employees reading Respondent's confidentiality rules would miss that notion or misinterpret them as a restriction on their Section 7 right to disclosure information they have gained that would advance their interests concerning their wages, hours and other terms and conditions of employment. Accordingly, I recommend dismissal of these allegations.

4. *The computer usage rules*

The complaint paragraphs 4(6) and 4(7) allege that Respondent's computer usage policy (Jt. Exh. 1, p. 2.13-2.16) violates the Act. The rule at issue appears in the handbook's "Computer Usage" section:

> **Computer Usage**: Computer resources are Company property and are provided to authorized users for business purposes. The company has the right to review or seize computer resources, including hardware, software, documents and electronic correspondence.
>
> . . .
>
> **Confidentiality:**
> Do not disclose or distribute outside of Rio's any information that is marked or considered confidential or proprietary unless you have received a signed non-disclosure agreement through the Law Department. In some cases, such as with Trade Secrets, distribution within the Company should be limited and controlled (e.g., numbered copies and a record of who has received the information). You are responsible for contacting your department manager or the Law Department for instructions.
>
> . . .
>
> **General Restrictions:**
> Computer resources may not be used to:
>
> - Commit, aid or abet in the commission of a crime
> - Violate local, state or federal laws
> - Share confidential information with the general public, including discussing the company, its financial results or prospects, or the performance or value of company stock by using an Internet message board to post any message, in whole or in part, or by engaging in an internet or online chat room
> - Convey or display anything fraudulent, pornographic, abusive, profane, offensive, libelous or slanderous
> - Send chain letters or other forms of non-business information
> - Seek employment opportunities outside of the Company
> - Invade the privacy of or harass other people
> - Solicit for personal gain or advancement of personal views
> - Violate rules or policies of the Company
>
> Do not visit inappropriate (non-business) websites, including but not limited to online auctions, day trading, retail/wholesale, chat rooms, message boards and journals. Limit the use of personal email, including using streaming media (e.g., video and audio clips) and downloading photos.

The Acting General Counsel urges that the Board overrule *Register Guard*, 351 NLRB 1110 (2007), and reinstate the principles in existence prior to that decision. Those principles, the Acting General Counsel argues, required an employer, with limited exceptions, to permit its employees to engage Section 7 communications using company equipment if the employer permitted other nonwork related communications using employer property. I decline to address

the wisdom, or lack thereof, of the *Register Guard* decision as that is a matter for the Board to consider and decide.

In addition, the Acting General Counsel, noting that employees may use the Company's computers to access their personal email and to use of "streaming media" on a limited basis, argues that the restrictions contained in the Company's computer usage policy "inhibit employee's Section 7 rights, as they do not allow employees to express concerns which may later become logical outgrowths of group concerns or discuss wages or working conditions." The restrictions the Acting General Counsel refers to are those bullet points set out above. In framing this argument, the Acting General Counsel assumes that the word "confidential" as used in the computer usage policy parallels that found in the confidentiality rules. Respondent disputes the Acting General Counsel's implicit assertion that the words "confidential information" as used here could reasonably be read to limit discussions of matters covered by Section 7. I agree.

Contrary to the Acting General Counsel's assertion, the computer usage rule does not explicitly import the definition of "confidential" from the handbook's confidentiality rules or refer to the subsequently appearing confidentiality rule at all. Nor would one expect it to where, as here, I have concluded in agreement with Respondent that the scope of the confidentiality rule gains its meaning from its from its specific context. Hence, as with the conclusions reached above concerning the confidentiality rule, I find the computer usage rule contains no explicit restriction on Section 7 rights. That being so, the Acting General Counsel had the burden of establishing by a preponderance of the evidence that employees would reasonably construe the computer usage rule so as to prohibit Section 7 activity. I find the Acting General Counsel failed to meet that burden. Accordingly, I recommend dismissal of complaint paragraph 4(6).

5. *Rules governing the use of camera and audio visual devices at work*

The General Counsel alleges that two of Respondent's rules prohibiting the use of camera phones or other audio visual devices at work unlawfully interfere with employee Section 7 activities. See complaint paragraphs 4(8) and 4(10). These rules are enumerated as conduct standards 24 and 35, respectively, in the employee handbook. They provide:

> 24. Personal pagers, beepers and cell phones worn by employees must not be visible or audible to guests and should not impact job performance. The use of personal cellular/digital phones is prohibited while on duty, but is (??not) allowed during break time in designated break areas. *Camera phones may not be used to take photos on property without permission from a Director or above.*
>
> 36. *Cameras, any type of audio visual recording equipment and/or recording devices may not be used unless specifically authorized for business purposes (e.g. events).*

The Acting General Counsel argues that as these rules are unlawful because employees could be reasonably interpret them to restrict the photographing or filming of fellow employees engaged in concerted activities such as picketing, or from photographing or filming unsafe working conditions. Respondent argues that the Board's decision in *Flagstaff Medical Center*, 357 NLRB No. 65 (2011), requires the dismissal of this allegation.

These two rules do not explicitly restrict Section 7 activity, nor, as previously stated, is there any evidence that Respondent adopted these rules in response to union activity or applied them to inhibit such activity. Hence, the question then becomes whether the Acting General Counsel met his burden of showing that employees would reasonably interpret the rules as a restriction on their protected activities.

As a general rule, an employer may restrict photographing and filming particularly within its interior work areas in order to prevent the disruptions to its operations and to protect against security breaches.[4] See e.g., *Bill's Electric*, 350 NLRB 292, 295 (2007) (salts who voluntarily participated with a union agent's videotaping of their employment application process after the employer's request that the filming cease amounts to misconduct outside the protection of the Act). It is not uncommon for business organizations to regularly provide its employees with training emphasizing the well-recognized practice restricting onsite filming and photographing. Given the widespread recognition of this practice, I am highly dubious of the Acting General Counsel's core argument that employees would reasonably interpret these rules as a restriction against the type of protected activity cited in his brief, i.e., picketing (likely to occur outside) and abnormally dangerous working conditions.

The Acting General Counsel's argument fails to gain the least bit of momentum from his efforts to distinguish the *Flagstaff Medical Center* case. The Acting General Counsel asserts, in effect, that the key component of the Board's decision in that case rests in the requirements under the Health Insurance Portability and Accountability Act of 1996 (HIPPA). Because there is no comparable legal duty to protect the privacy of hotel guests, the Acting General Counsel argues, the *Flagstaff Medical Center* case is inapplicable here.

I find the Acting General Counsel's arguments concerning the import of the *Flagstaff Medical Center* decision fail for two principal reasons. First and foremost, the Acting General Counsel's argument mirrors the dissent's position in *Flagstaff Medical Center* that employees would reasonably read the photography ban to bar taking a picture of a smoking electrical outlet to support their efforts to improve safe working conditions. Obviously the Board majority did not share the dissenting member's outlook and it is the majority's view of the law that I am obliged to apply.

And secondly, I disagree with the Acting General Counsel's otherwise limited view that the outcome in *Flagstaff Medical Center* concerning the photography ban is largely predicated on HIPPA privacy requirements. In effect, the Acting General Counsel presupposes that employers should be restricted in establishing similar workplace rules to those instances where the law imposes a specific duty. In my judgment, this contention is flawed. In the same sense that an employer may discharge an employee for a good reason, bad reason, or no reason at all so long as it is not a reason prohibited by law, the law recognizes the right of an employer to establish workplace rules within a similar framework. As Respondent argues, a hotel and a casino operation has a strong interest in protecting and guarding the privacy of its guests even though the guests' privacy interests do not always enjoy some form of legal protection similar to that of hospital patients. In the overwhelming majority of instances, hotel employees understand

[4] Indeed, the Federal courts famously do likewise. See *Hollingsworth v Perry*, 558 U.S. ___ (2010).

and respect the privacy of the hotel guests. This common recognition on the part of hotel employees augurs against a conclusion that they would reasonably read a photography and filming ban as being designed to chill their Section 7 activities. Hence, absent some compelling evidence to the contrary not present here, I find it likely that the typical hotel employee would perceive that the rule at issue here has nothing at all to do with their right to engage in union or concerted activities. For these reasons, I have concluded that the Acting General Counsel failed to establish by a preponderance of the evidence that Respondent violated the Act by merely maintaining a rule banning the taking of photos and filming at its workplace. Accordingly, I recommend dismissal of this allegation.

6. *Rule against walking off the job*

Complaint paragraph 4(9) sets forth the last rule at issue. That rule, conduct standard 28, provides:

> 28. *Employees who walk off the job during shift will be considered to have abandoned their job and voluntarily separated their employment."*

This rule requires little discussion. It is devoid of ambiguity. It is an explicit restriction on Section 7 rights. The Act protects the right of employees to engage in concerted activities, including the right to strike without prior notice. *NLRB v. Erie Resistor Corp*., 373 U.S. 221 (1963); *Montefiore Hospital,* 621 F.2d 510 (2d Cir. 1980). The Board has long held that an employer violates Section 8(a)(1) by maintaining a blanket prohibitions against work stoppages, i.e., those that fail to distinguish between protected and unprotected work stoppages. *Catalox Corp*., 252 NLRB 1336, 1339 (1980). Respondent's work-stoppage rule amounts to the type of overly broad ban prohibited by the Board. For this reason, I find this Respondent's walkout rule violates 8(a)(1).

CONCLUSION OF LAW

By maintaining a workplace rule that prohibits employees from engaging in a walkout, Respondent has engaged in an unfair labor practice affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

My recommended order requires Respondent to expunge its rule prohibiting employees from engaging in a walkout protected by Section 7 of the Act and to post the attached notice to employees.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, Caesars Entertainment d/b/a Rio All-Suites Hotel and Casino, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining a workplace rule prohibiting employee walkouts protected by Section 7 of the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Expunge from its workplace rules any prohibition against employees engaging in a walkout protected by Section 7 of the Act.

(b) Within 14 days after service by the Region, post at its Rio All-Suites facility in Las Vegas, Nevada copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 5, 2011.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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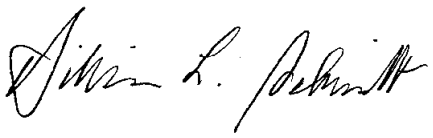
[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. , March 20, 2012.



William L. Schmidt
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT maintain a workplace rule that prohibits employees from engaging in a walkout protected by Section 7 of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remove from our rules any prohibition against employees engaging in a walkout protected by Section 7 of the Act.

Caesars Entertainment d/b/a
Rio All-Suites Hotel and Casino
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

2600 North Central Avenue, Suite 1800, Phoenix, AZ 85004-3099
(602) 640-2160, Hours: 8:15 a.m. to 4:45 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (602) 640-2146.